


PTO/SB/21 (08-08)

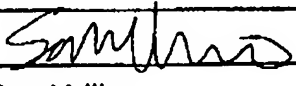
Approved for use through 08/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/521,926	
	Filing Date	July 22, 2005	
	First Named Inventor	Heinz Berner	
	Art Unit	1625	
	Examiner Name	Raymond K. Covington	
Total Number of Pages in This Submission	15	Attorney Docket Number	KS4258US (#90711)

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): attachments and return postcard receipt
Remarks _____		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	D. Peter Hochberg Co., L.P.A.		
Signature			
Printed name	D. Peter Hochberg		
Date	August 29, 2008	Reg. No.	24,603

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:			
Signature			
Typed or printed name	Sean Mellino	Date	08/29/2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/17 (10-07)

Approved for use through 06/30/2010, OMB 0851-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**
For FY 2008☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 0.00

Complete if Known

Application Number	10/521,926
Filing Date	July 22, 2005
First Named Inventor	Heinz Berner
Examiner Name	Raymond K. Covington
Art Unit	1625
Attorney Docket No.	KS4258US (#90711)

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☒ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 08-2441 Deposit Account Name: D. Peter Hochberg Co., L.P.A.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

Each claim over 20 (including Reissues)
Each independent claim over 3 (including Reissues)
Multiple dependent claims

Fee (\$)	Small Entity Fee (\$)
50	25
210	105
370	185

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP =	x	=	
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HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP =	x	=	
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HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	260.00	0.00

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge):

Fees Paid (\$)

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	24,603	Telephone	216-771-3800
Name (Print/Type)	D. Peter Hochberg	Date	August 27, 2005		

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

D. PETER HOCHBERG CO., L.P.A.

ATTORNEYS AT LAW

D. PETER HOCHBERG*
SEAN MELLINO
DANIEL J. SMOLA1940 EAST 6TH STREET - 6TH FLOOR
CLEVELAND, OHIO 44114

INTELLECTUAL PROPERTY LAW

PATENT TRADEMARK
AND COPYRIGHT LAW

IAN M. SINGER***

OF COUNSEL

* ALSO ADMITTED IN
VIRGINIA AND NEW YORK
*** ADMITTED IN NEW YORK, ONETEL (216) 771-3800
FAX (216) 771-3804

November 18, 2008

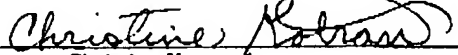
e-mail: dphochberg@aol.com

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below:

To Fax No: 1 (571) 273-6500 (9 pages)

By:


Christine KotranDate: November 18, 2008Mail Stop 16 - Attn.: **Refund Branch**
Director of the US Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450Re: Request for Refund - Charge(s) to Deposit Account No. 08-2441
October 2008 Statement / Our Ref.: Berner et al. S/N 10/521,926
Our Ref. KS4258US (#90711)

Gentlemen:

A copy of a printout of our Deposit Account statement for October, 2008 is attached. The following charge to our Deposit Account has been entered in error:

<u>Date</u>	<u>Seq</u>	<u>Posting Ref Txt</u>	<u>Attorney Docket Nbr</u>	<u>Fee Code</u>	<u>Amt</u>
10/07	2	10521926	IB/G-32577A/ABR 9926 (now KS4258US)	1251	\$120.00

Fee code 1251 covers a large entity one-month extension of time fee that would have been due if a reply to the Office Action was mailed *after* August 29, 2008; however, the "Reply to Office Action Issued May 29, 2008" was timely mailed to the USPTO with a Certificate of Mailing on August 29, 2008 (a Friday), as verified by the attached papers. Further, our return post card shows a receipt date at the USPTO on September 2, 2008 (a Tuesday, with Monday, September 1, being Labor Day, a holiday). Copies of the following additional documents are attached and verify that Reply to


Office Action was due and timely mailed on August 29, 2008, and that no extension of time fee was required:

- 1) Two sheets: Cover sheet and "Office Action Summary" which indicate the Action mailing date as 05/29/2008 and a 3-month reply date; therefore, the response deadline would be due 08/29/2008.
- 2) Two sheets: Our "Transmittal Form" with a certificate of mailing dated 08/29/2008, our "Fee Transmittal," which shows no payment included but to charge additional fees to our Deposit Account.
- 3) First page of our "Reply to the Office Action Issued May 29, 2008 also with a Certificate of Mailing dated August 29, 2008 – a timely filing!
- 4) Post card stamped SEP 02 2008 as the receipt date of our response to the Office Action.

Accordingly, please immediately credit Deposit Account 08-2441 for the amount totaling \$120.00 because no extension of time fee was required.

Please do not hesitate to contact us if there are any questions concerning the processing of this credit.

Sincerely yours,


Christine Kotran for
Maxine Singer, Administrator

Att.
11/18/2002 MS/ck



**United States
Patent and
Trademark Office**

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Deposit Account Statement

Requested Statement Month: October 2008
Deposit Account Number: 082441
Name: D PETER HOCHBERGCO, L.P.A.
Attention: MAXINE SINGER
Street Address 1: 1940 EAST 6TH STREET
Street Address 2: THE BAKER BUILDING - 6TH FLOOR
City: CLEVELAND
State: OH
Zip: 44114
Country: UNITED STATES

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
10/01	190	10527882	KS4256US (#90711)	1201	-\$210.00	\$3,129.31
10/03	8419	3506080	JN4429CA (#90664)	8503	\$15.00	\$3,114.31
10/07	2	10521926	IB/G-32577A/ABR 9926	1251	\$120.00	\$2,894.31
10/16	13307	3327127	SU4185CA (#90124)	8503	\$15.00	\$2,979.31
10/24	3	10745889	RO0190US.RCEDIV (#90568)	1202	\$4.00	\$2,975.31

START SUM OF
BALANCE CHARGES
\$2,919.31 \$154.00

SUM OF END
REPLENISH BALANCE
\$210.00 \$2,975.31

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Nov 19, 2008 11:36PM

No. 1428 P. 4



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,926	07/22/2005	Heinz Berner	IB/G-32577A/ABR. 9926	6141
28672 7590 05/29/2008 D. PETER HOCHBERG CO. L.P.A. 1940 EAST 6TH STREET CLEVELAND, OH 44114			K54258US EXAMINER COVINGTON, RAYMOND K	
			ART UNIT 1623	PAPER NUMBER
			MAIL DATE 05/29/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,926

Applicant(s)

BERNER ET AL.

Examiner

Raymond Covington

Art Unit

1625

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-10 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 1/21/05.

- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date: _____
 5) ☐ Notice of Informal Patent Application
 6) ☐ Other: _____

U.S. Patent and Trademark Office
 PTOL-328 (Rev. 08-06)


Office Action Summary

Part of Paper No./Mail Date 20080524

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service as First Class mail in an envelope addressed: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date noted below:

Date: August 29, 2008


Sean Mellino

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Heinz Berner, et al.
Serial No. : 10/521,926 (Conf. No. 6141)
Filing Date : July 22, 2005
Title : PLEUROMUTILIN DERIVATIVES AS
ANTIMICROBIALS
Group Art Unit : 1625
Examiner : Raymond K. Covington
Attorney Docket : KS4258US (#90711)

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Reply to the Office Action Issued May 29, 2008

Dear Sir:

In response to the Office action dated May 29, 2008, please amend the above identified application without prejudice as follows:

Due Date 8/29/08 Date 8/29/08

Express Mail: _____

Appln. Pat. _____ T.M. _____ POT _____ PROV _____

Spec. Pages _____ Claims _____ Abstract _____

Drawings Sheets _____ (Inf. _____)

Declaration _____

Assignment w/Letter _____

☒ Transmittal Letter / ☒ Fee Trans. (2 copies)

Check / Credit Card Amt. _____

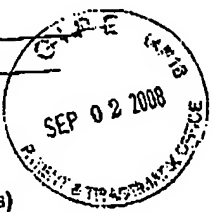
☒ Amendment Pat. ☒ T.M. _____

Appeal with Check \$ _____

Appeal Brief pages _____, with check \$ _____

☒ Others office action response; attachments

Serial No. 1052197 Filed 7/22/05 Docket KS425845



Document code: WFEE

United States Patent and Trademark Office
Sales Receipt for Accounting Date: 10/07/2008

MMAY22 SALE #00000002 Mailroom Dt: 09/02/2008 082441 10521926
01 FC:1251 120.00 DA

Adjustment date: 11/24/2008 HDESTA1
10/07/2008 MMAY22 00000002 082441 10521926
01 FC:1251 120.00 CR